IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6070 OF 2005

Sunil Trambak @ Pandharinath
Deolalkar & Anr. ...Petitioners
Vs.
Dattatraya Dhondusheth Deolalkar ...Respondent

Mr R.D. Suryawanshi for the Petitioners.
Ms Preetam Tendulkar with Mr M.S. Karnik for the Respondent Nos.1, 2 and 4.

CORAM : S. B. MHASE, J.
DATE : MARCH 23, 2006.

P.C.:

1. Heard both the sides. Rule returnable forthwith. The order passed on 09th April, 2005 below Exhibit 66 from the Regular Civil Suit No.68 of 1999 pending on the file of Civil Judge, Junior Division, Nashik is challenged by this Writ Petition. By Application Exhibit 66 the Petitioner is seeking an amendment under Order 6 Rule 7. By this Application the Petitioner is seeking the amendment in paragraph 1 of the said suit which describes a house property situated within the village of Mane Devlali, Taluka Nashik, District Nashik and the description of the said property is given as constructed in teakwood roof of with five khan rooms and veranda admeasuring 3 X 90 and 3 X 191 and the boundaries of the said property have been given. By the proposed amendment minute details in respect of the said property has been tried to be incorporated. Boundaries of the said property as disclosed in proposed amendment are one and the same as reflected with the original suit.

Thus, as a result of the amendment no fresh case is made out by the Petitioner, but only an elaborate description of the property has been provided for, to make the description of the property more correct and specific. The only objection taken to this amendment is that the issues have been framed and therefore, at the belated stage amendment is proposed. Since amendment is not changing the nature of the suit and no attempt to make out a new case has been made out, such amendment should have been allowed by the Trial Court. The reasoning given by the Trial Court that it is submitted at late stage is not just and proper in the facts and circumstances of the present case and therefore, order below Exhibit 66 is required to be set aside and is accordingly set aside. The order passed below Exhibit 66 in Regular Civil Suit No.68 of 1999 dated 09th April, 2005 is hereby set aside. Exhibit 66 is allowed.

2. The plaintiff-petitioner is hereby directed to carryout the amendment in the suit within period of two weeks from today.

3. Accordingly, petition is allowed. Rule accordingly.

JUDGE